

Testimony
Bonnie Lovelace, Chief, Water Protection Bureau
Department of Environmental Quality (DEQ)
HB 119

EXHIBIT 2
DATE 1-19-07
HB 119

The Department of Environmental Quality has requested this legislation to address a number of items in the Water Quality Act. Section 1 removes a rulemaking requirement added in 2003. The requirement to address timing and location for suction dredging was accomplished without rulemaking. We believe that the current process responds to the needs of fisheries resources, conservation district permitting involvement during 310 permit issuance and DEQ permitting on a regularly updated stream listing. Rules would have been forced to take a snap shot in time on the conditions of a drainage, whereas the current process allows the Department of Fish, Wildlife and Parks to open drainages at certain times when recreational suction dredging can occur.

Section 2 addresses the imposition of treatment requirements on a case-by-case basis in Montana's MPDES permits. When water quality discharge permits are written, the permit writer must impose the minimum treatment requirements promulgated by EPA for various industries, unless a more stringent limitation is needed to meet state water quality standards. If EPA has not promulgated treatment requirements, then, under federal rules, the permit writer may impose treatment requirements using his best professional judgment (BPJ). DEQ is requesting this amendment because under existing law, we do not believe we have authority to use BPJ to develop treatment requirements on a case-by-case basis when EPA has failed to do so. Using BPJ is not an arbitrary process, but rather must follow an established process determined in federal rule. This rule is incorporated here. The factors include technology used, cost, engineering aspects, age of equipment, non-water quality environmental impacts (including energy requirements). The handout provides a chart explaining the details of review and what we are asking.

Section 3 removes a few exemptions from groundwater permitting. These exemptions are removed in order to allow permitting of facilities internal to larger operations, not the full operations themselves. Oftentimes within a large mine operation, for example, a separate facility exists that collects, transports and discharges pollutants, industrial or sewage, that if located anywhere else, would require a permit. The DEQ would like to treat these facilities like any other and permit them the same way. Three exemptions are requested for deletion: in-situ mining of uranium, coal mining facilities, and hard rock mining facilities.

Section 4 contains a provision to require storm water permits for construction sites greater than one acre or that are part of a common plan of development that will disturb greater than one acre. Currently, in rule there is a requirement that any person who discharges or proposes to discharge storm water from a point discharge must obtain coverage from such a permit. Many individuals seek coverage and remain in compliance. However, many do not. Suspended sediment loads from disturbed construction sites can significantly impact designated uses of receiving surface waters including aquatic life. In both Montana and nationally, sediment, nutrients and pathogens are listed as the major sources of impairment of surface waters. Some studies used to help justify EPA and Montana moving from 1 to 5 acre disturbance permitting requirements generally indicated construction-related disturbance can increase suspended sediment loads by 250 to 400 percent above pre-existing conditions. For commercial construction projects it could be much worse. For each year of active construction, impacts could equate to tens of tons of additional sediment yield per acre of construction-related disturbance being discharged to Montana's surface waters. Furthermore, sediment runoff rates from construction sites are 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those from forestlands.

Currently, in the Water Quality Act there is an exemption from permitting if storm water discharge goes only to groundwater. Further, there is a waiver process in rule if it can be demonstrated that the erosivity and short duration of disturbance of a site will preclude storm water runoff. The DEQ believes that protecting our waters from pollution is an important duty and that the off ramps exist for those practices or sites that will be protective. Otherwise our waters are at risk without the permitting that requires best management practices.

Finally, Section 5 is a simple correction of references to federal rules that address projects eligible for loan assistance.



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Montana Recreational Suction Dredge Permit Information

Recreational Suction Dredge Permits:

Water Protection Bureau is working in conjunction with the Department of Fish Wildlife and Parks (DFWP) to identify issues of interruption of habitat and biological cycles of aquatic life caused by recreational suction dredging. The following is a list supplied by DFWP showing stream classifications that affect accessibility for recreational suction dredging. [Recreational Suction Dredging Guidelines \(Excel 1.4 MB\)](#)

To obtain a recreational suction dredge discharge permit the following conditions apply.

- ☐ DEQ will permit only after a 310 permit is issued by the county conservation district for the disturbance to the stream segment. You must submit a copy of the 310 permit with the suction dredge application.
- ☐ DEQ will not issue permits on stream segments classified by DFWP as closed.
- ☐ DEQ will process permits for stream segments classified by DFWP as unlimited or restricted.
- ☐ DEQ will include the seasonal restriction from the DFWP recreational suction dredging guidelines list in the permit.

DEQ Staff Contacts

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EFFLUENT LIMITS

- ◆ PROTECT BENEFICIAL USES
- ◆ STAY WITHIN STANDARDS
- ◆ STAY WITHIN NONDEGRADATION LEVELS

TECHNOLOGY-BASED (TBELs)

- ◆ National effluent limitations guidelines (ELGs)
 - ◇ 60+ ELGs w/numerous subcategories
 - ◇ Minimum level of treatment for industrial/municipal point sources
 - ◇ Based on demonstrated performance of reasonable level of treatment within economic means of categories
 - ◇ Limits dilution as a solution to pollution
 - ◇ Cost borne by discharger, not by user (drinking water irrigator, recreationist, and society).

CURRENT

- ◆ Best Professional Judgment by rule factors include:
 - ◇ Age of equipment
 - ◇ Manufacturing processes used
 - ◇ Engineering aspects of control technologies, incl. process changes and in-plant controls
 - ◇ Nonwater quality impact
 - ◇ Cost (varies based on old vs new and type of pollutant)
 - ◇ Other factors, as deemed appropriate

ADDITION PROPOSED

WATER QUALITY-BASED (WQBELs)

- ◆ If No TBEL for the pollutant or
- ◆ If TBEL not protective of water quality
 - ◇ Does not consider cost effectiveness
 - ◇ Uses dilution as a solution to pollution

CURRENT

NATIONAL SYSTEM



Storm Water sheet
flow across a single
family home site



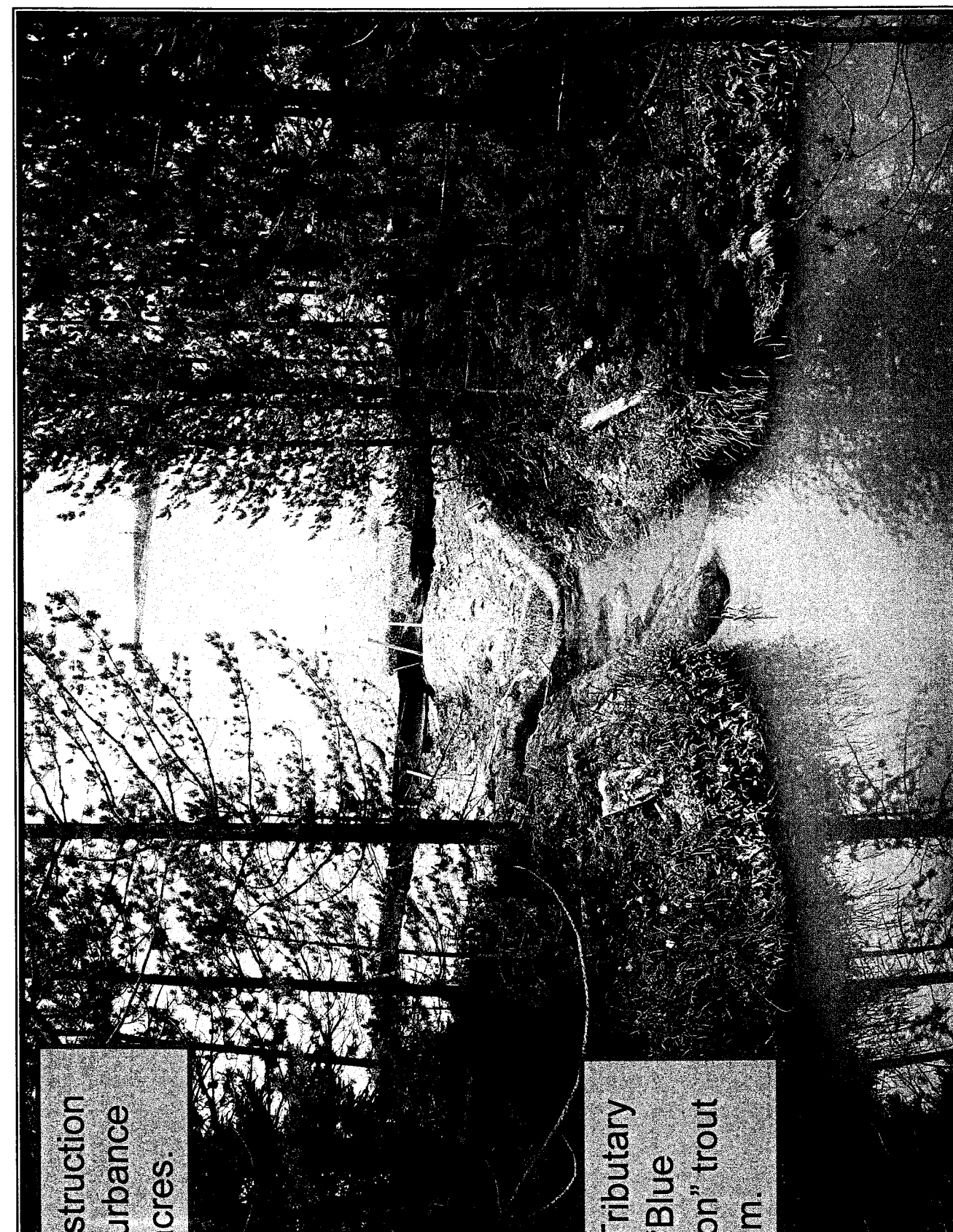
Flow where it enters
and mixes with other
home site discharges
in an ephemeral
tributary of a B-1 (5
NTU) stream

Slide from construction
disturbance of <5 acres.
This slide ends in a "Blue
Ribbon" B-1 trout stream.



Sediment discharge to
a B-2 river. Measured
NTU's were in excess
of 1000.

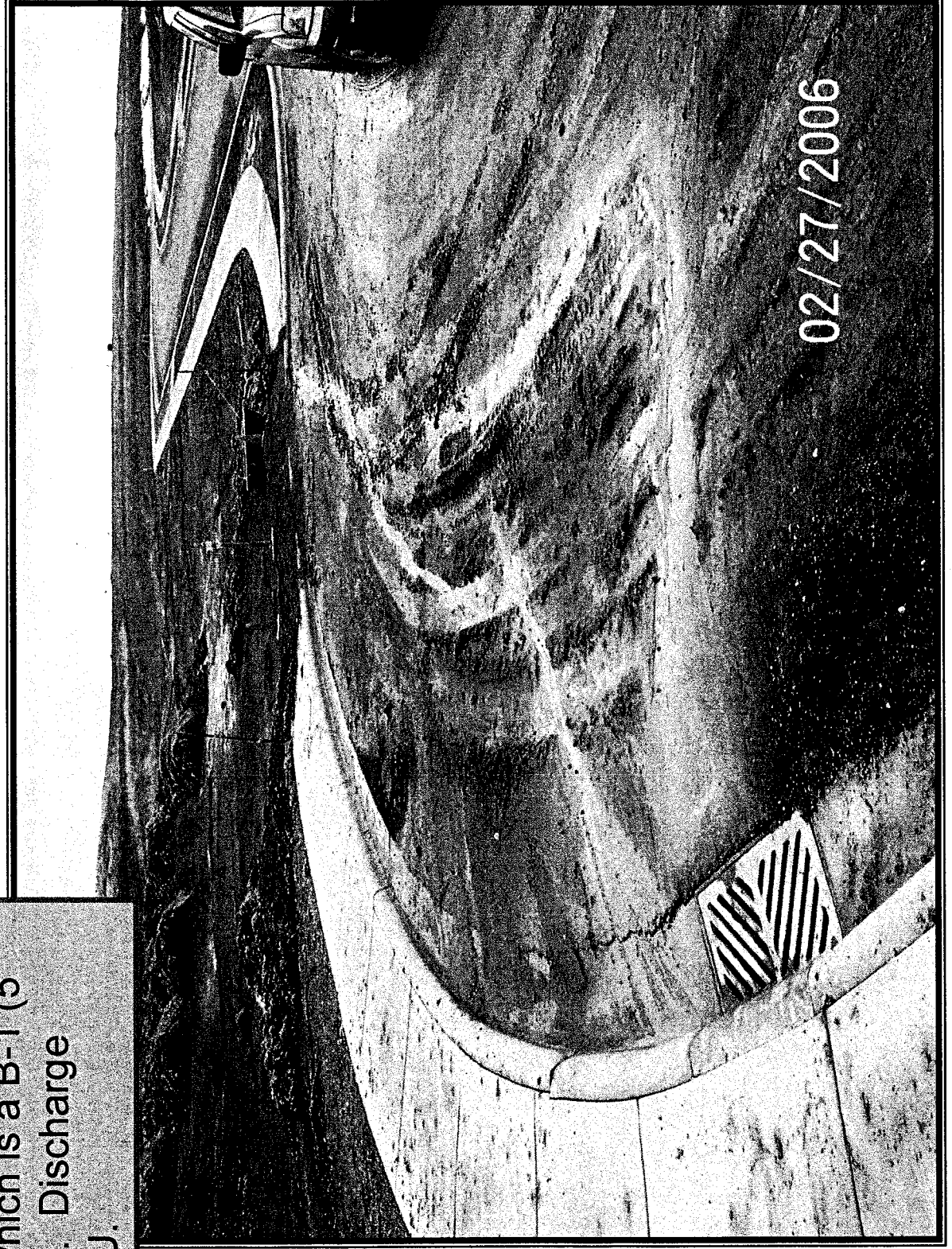




Construction
Disturbance
<5 acres.

B-2 Tributary
to a "Blue
Ribbon" trout
stream.

Sediment flow from 1-5 acre construction disturbance and soil stockpiles, along the curb and into a storm drain that discharge to the Bitterroot River which is a B-1 (5 NTU) state water. Discharge exceeds 100 NTU.



17.30.601 Policy (1) The following Standards are adopted to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, and fish and aquatic life, agriculture, industry, recreation, and other beneficial uses.

A-Closed and A-1 allow 0 increase in turbidity (NTU) above naturally occurring unless permitted. These waters are to be maintained suitable for drinking, culinary, and food processing purposes after simple disinfection (A-Closed), or after conventional treatment for removal of naturally present impurities (A-1).

B-1 & C-1 allow an increase in turbidity of 5 NTUs above naturally occurring unless permitted. B-1 waters are to be maintained suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. C-1 waters are to be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

B-2, B-3, C-2 & C-3 allow an increase in turbidity of 10 NTUs above naturally occurring unless permitted. B-2 waters are to be maintained suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. B-3 waters are to be maintained suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. C-2 waters are to be maintained suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. C-3 waters are to be maintained suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply. Degradation which will impact established beneficial uses will not be allowed

A-1 STREAMS

Georgetown Lake & tribs

Whitefish Lake & tribs

Flathead River – N & Mid Forks

Big Hole River to Butte H2O Intake

W Fork Rock Creek to Red Lodge

B-1 & C-1 STREAMS

Swan River

Clark Fork – Cottonwood to Ltl Blackfoot

Sun River

Belt Creek tribs

Yellowstone to Laurel

B-2,3 & C-2,3 STREAMS

Whitefish River

Clark Fork – Wm Springs Crk to Cottonwood

E Gallatin River to Dry Crk

Sun River – Muddy Crk to Missouri

Milk River

Tongue River

***Turbidity is defined as a condition caused by the presence of suspended matter resulting in the scattering and absorption of light rays. Turbidity is measured in Nephelometric Units.**